

APR 07 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD THOMAS,

Plaintiff - Appellant,

v.

A. A. LAMARQUE; et al.,

Defendants - Appellees.

No. 07-15503

D.C. No. CV-05-05189-VRW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, Chief Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

California state prisoner Edward Thomas appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action, without prejudice, for failure to exhaust administrative remedies as required by the Prison Litigation

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed the action because Thomas did not properly exhaust administrative remedies before filing his complaint in federal court. *See Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) (explaining that “proper exhaustion” requires adherence to administrative procedural rules). Further, Thomas failed to show that he was prevented from exhausting.

We do not consider arguments raised for the first time in the reply brief. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.